

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)	
COMPANY FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY FOR THE)	CASE NO.
CONSTRUCTION OF TRANSMISSION FACILITIES)	2005-00154
IN ANDERSON, FRANKLIN, AND WOODFORD)	
COUNTIES, KENTUCKY)	

O R D E R

On May 11, 2005, Kentucky Utilities Company (“KU” or the “Company”) filed for a Certificate of Public Convenience and Necessity (“CPCN”) to construct a 12.4-mile 138 kV transmission line running from KU’s Tyrone Substation in Woodford County, through parts of Anderson County, to its West Frankfort Substation in Franklin County.¹ The proposed \$7.9 million transmission facility will be used to transmit electric power from the proposed 750 MW nominal net (732 MW summer rating) supercritical, pulverized, coal-fired, base load generating unit to be located at the Trimble County Generating Station (“TC2”)² to native load.³

¹ This application is one of a package of three proposed transmission lines before the Commission. The other two applications are Case Nos. 2005-00142 and 2005-00155, and Orders in those cases are being issued today as well.

² This proposed plant addition is currently before the Commission in Case No. 2004-00507 and the Siting Board in Case No. 2005-00152. Neither agency has, as of the date of this Order, granted a certificate for the addition.

³ The General Assembly amended KRS 278.020 in 2004 to require that a utility obtain a CPCN before constructing any electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length.

PROCEDURAL BACKGROUND

The Commission entered procedural Orders on May 23 and June 10, 2005, setting, among other deadlines, dates for interventions, filing of testimony, and hearing dates. The May 23, 2005 Order also extended the time for the Commission to process the case from 90 to 120 days, pursuant to KRS 278.020(8). On June 9, 2005, the Commission granted intervention to the Concerned Citizens Against the Transmission Line ("Concerned Citizens"). The Commission also received numerous protest letters. The Commission's consideration of the need for the proposed transmission line included a review of KU's engineering studies and data and the report of the Commission's consultant for this case, the Liberty Consulting Group ("Liberty"). Liberty filed its report analyzing KU's proposal on June 15, 2005 ("Liberty Report").

The Commission held a local public hearing on July 5, 2005 in Frankfort, Kentucky. Forty-five people, including representatives of KU, attended the hearing, with eleven members of the public making oral comments. The Commission held an evidentiary hearing at its offices in Frankfort, Kentucky on July 26 and 27, 2005.

PROCEDURAL ISSUES

Concerned Citizens filed motions to dismiss the application, arguing that it was premature on several grounds. First, they argue that this application is premature prior to the certification of the Trimble generating plant addition. KU has countered, however, that it needs to start the transmission acquisition and construction process concurrent with the plant addition to make sure the lines are ready to handle the power flow as soon as the generator comes on line. Nothing in KRS 278.020 addresses this question and without specific statutory authority to require the sequential filings that the

Concerned Citizens urge, the Commission does not believe it should dismiss the application on this ground. Nevertheless, the Commission recognizes that issuance of a CPCN in this case is dependent upon issuance of one in Case No. 2004-00507, and KU has acknowledged in its brief that an issuance in this case should be contingent on issuance in that one. This agreement should alleviate the Concerned Citizens' apprehensions.

Second, the Concerned Citizens argue that the application is premature because all environmental, historical, and other required assessments are not complete. Their expert on this issue, Janice Rice Brother, testified that the project will be subject to approval under Section 106 of the National Historic Preservation Act. They argue that the Commission should not consider this application until the Company has obtained all other necessary permits.

The Commission likewise finds no support in KRS 278.020 for this position. Statutes that require a particular agency or application to be the "last stop" are easy to draft and simply state that the application for a specific permit shall not be filed until all other necessary permits are in hand. The absence of such a provision in KRS 278.020 is significant.

In deciding how to proceed with the numerous applications required for such a project, utilities have to apply for some permit first. If they apply to the Commission first, get a CPCN, and then apply for other permits, and one or more of those later permits are rejected, they may well have to reapply here. On the other hand, if they get their other permits first, the Commission may reject the proposed route; and in that case they would have to reapply for the other permits. In the end, the Order in which they choose

to apply for the different approvals is at the discretion of the utilities. Therefore, under the wording of KRS 278.020, the Commission does not believe it has the authority to require the Company to obtain other permits first. For these reasons, the Concerned Citizens' motions to dismiss the application on procedural grounds are denied.

CPCN STANDARD

The issues to be decided in an application for a CPCN to construct facilities are (1) whether the facilities are needed and (2) whether the construction will result in a duplication of facilities⁴.

With regard to the first issue, numerous witnesses at the local hearing argued that the line is not needed, but there was no disagreement among the witnesses at the evidentiary hearing on the issue. KU's witnesses testified that if the Trimble plant addition is built, the line will be required. The Company further stated that the main goal of the transmission project is to ensure the reliability of the network at the least cost to the public. The transmission planning studies by both KU and the Midwest Independent Transmission System Operator, Inc. ("MISO") considered this and the other two proposed lines⁵ as a package designed to accommodate bringing TC2 on-line. The transmission planning studies considered the entire transmission system of both KU and Louisville Gas and Electric Company ("LG&E") as a whole in searching for the best way to protect the system once TC2 came on-line. Liberty reviewed the transmission planning processes and preliminary transmission studies of LG&E and KU and the

⁴ E.g., *Kentucky Utilities Company v. Public Service Commission*, 252 S.W. 2d 885 (Ky. 1952).

⁵ These lines are the subject of Case Nos. 2005-00142 and 2005-00155.

additional work of MISO transmission planning engineers. MISO performed all power flow and short circuit studies and all transient and long-term stability studies. LG&E and KU performed an internal short circuit analysis to verify the short circuit results obtained by MISO. Liberty agreed with the Company that the line, in addition to the other two proposed lines, will be required to carry the power from TC2 and that it should be built on the proposed schedule.⁶ The Concerned Citizens' counsel cross-examined the Company's witnesses on this issue, but offered no contrary testimony on the issue of need. Based upon the testimony and other evidence in the record, the Commission finds that the need for the proposed line has been established and will be required upon commencement of operations at TC2.

The second issue, regarding the potential for duplication of facilities, is significantly more complicated and was fiercely contested. Public witnesses raised concerns about a multitude of issues, such as splitting family farms, coming too close to residences, and destroying the potential marketability of properties for later subdividing.

In *Kentucky Utilities*, the Court of Appeals, then Kentucky's highest court, defined "duplication of facilities" to mean that the Commission must examine proposed facilities "from the standpoints of excessive investment in relation to efficiency, and an unnecessary multiplicity of physical properties." *Id.* at 891. The Commission in that case had approved a substantial expansion of East Kentucky Power Cooperative, Inc.'s ("EKPC") system, granting CPCNs for both generation and transmission facilities. The Court affirmed the CPCN for the generating plant, but remanded the case to the

⁶ Liberty Report, at I-3.

Commission to decide if the transmission lines proposed by EKPC would needlessly duplicate existing lines of other utilities, stating:

It is our opinion that the case should be remanded to the Public Service Commission for a further hearing addressed to the question of duplication from the standpoint of an excessive investment in relation to efficiency, and from the standpoint of inconvenience to the public generally, and economic loss through interference with normal uses of the land, that may result from multiple sets of right of ways [sic], and a cluttering of the land with poles and wires.

Id. at 892.

Here, KU has proposed the route that it determined to be the best and lowest cost. In the context of the MISO transmission studies, the package of lines represented by this specific line and the other two lines (Case Nos. 2005-00142 and 2005-00155) represents the least-cost option.

The Concerned Citizens offered Ottis Jones, an engineer, as an expert witness on this issue. He proposed two routes, labeled D-1 and D-2, along existing transmission line corridors, acknowledging that he had not run power studies, but testifying that his alternative routes would work electrically.

In response, KU witness Johnson testified that he had a “basic understanding” of the alternatives offered by the Concerned Citizens,⁷ and the analyses the Company conducted and relied upon “concluded that additional facilities would be needed; that there were not any upgrades or additional upgrades that we could make to existing

⁷ Transcript (“Tr.”), Vol. I, at 71, lines 16-18.

facilities that would, in turn, provide the same level of relief for overloads on the system as a result of adding the 750 megawatts at TC2.”⁸

When specifically asked about the alternative lines, however, KU engineering witness Toll agreed, based on a weekend review, Route D-1 is “reasonable,”⁹ although not “electrically equivalent.”¹⁰ Liberty witness Cannata testified that he did not believe D-1 was a viable option for a variety of reasons.¹¹ He acknowledged he had not conducted a detailed analysis of Route D-1,¹² and the record does not indicate that KU has conducted such a detailed analysis either. While KU points to the overall analyses that it, MISO, and Liberty conducted, the only specific reference to a study of the route was the weekend review, which the witness admitted was not thorough.¹³

KU witness Toll estimated that Route D-1 would cost an additional \$1.84 million over the proposed route.¹⁴ When questioned about the potential impact on customer bills, KU’s financial witness Conroy testified that it would not be a billable difference in cost.¹⁵

⁸ Tr., Vol. I, at 72, lines 5-10.

⁹ Tr., Vol. I, at 214, lines 14-20.

¹⁰ Tr., Vol. I, at 240-241.

¹¹ Tr., Vol. II, at 24, lines 17-18.

¹² Tr., Vol. II, at 27, lines 19-23.

¹³ Tr., Vol. I, at 214, lines 17-19.

¹⁴ Tr., Vol. I, at 202, lines 20-21.

¹⁵ Tr., Vol. I, at 249-250.

The Commission recently issued a decision in Case No. 2005-00089 in which it rejected an application by EKPC to build a transmission line in Rowan County (“Rowan Order”). There the Commission set the standard for determining if a proposed line will create wasteful duplication of facilities, stating, “future applications should comprehensively consider the use of existing corridors in planning future transmission.”

This case pointed out that, in deciding the issue, “the Commission must balance all relevant factors. . . , [including] the availability of an alternative route and the magnitude of the increased cost of that alternative route.” Here KU, in conjunction with MISO, looked at various alternative routes, but the record does not indicate it conducted a comprehensive analysis of routes that would follow existing transmission lines or other existing right-of-way corridors.

CONCLUSIONS

In implementing the amendments to KRS 278.020, the Commission must analyze both issues Kentucky courts have identified as bearing on issuance of a CPCN: (1) whether the facilities are needed and (2) whether the construction will result in a duplication of facilities. With regard to the second, the Commission here reaffirms the holding in the Rowan Order that the applicant must comprehensively consider existing corridors and utility lines when it applies for a transmission line CPCN. Without this information, the Commission cannot determine whether the standards set forth in *Kentucky Utilities* are satisfied. The Commission finds KU’s study of alternative routes in this case was not sufficiently comprehensive, as demonstrated by the Concerned Citizens’ identification of a route the Company had not thoroughly analyzed. KU’s

“weekend review” of the Concerned Citizens’ alternative by one of its engineers does not suffice to meet this requirement.

With today’s issuance of this Order and the Order in Case No. 2005-00142, the Commission has now denied transmission CPCNs in three of the last four cases decided.¹⁶ With the recent change in the law, however, these decisions should not be misinterpreted as indicating a reluctance by the Commission to approve the construction of new transmission lines. The Commission fully understands the need for a robust transmission infrastructure; indeed, in each of the three cases, we found the applicant proved a need for a line. Nevertheless, the Commission is mindful of its duties in administering the law of the Commonwealth, and a key element of that law is the admonition from over half a century ago to guard against “multiple sets of right of ways and a cluttering of the land with poles and wires.”

As the Commission discussed in the Rowan Order, a change in the law often results in some parties being caught in a dilemma wherein they began a process operating under one set of laws, and the laws change. Sometimes, as here, this change results in a significant change in the approach the parties may need to take.

These recent Orders have been the first opportunity for the Commission to establish legal precedent to applications under the new statute. While in the short term this transition may result in minor delays in the construction of lines, in the long term the Commonwealth and its citizens will benefit from a sharing of utility easements, whenever possible.

¹⁶ The Commission previously rejected EKPC’s application in Case No. 2005-00089 and today granted the uncontested application in Case No. 2005-00155.

Therefore, the Commission finds that additional transmission facilities are required to integrate the proposed TC2 generating plant into the transmission grid. We further find that KU has established a need for such a project. Nevertheless, the Commission lacks sufficient information to determine if the proposed transmission line would result in a wasteful duplication of facilities. Specifically, the Commission finds that KU failed to adequately consider the use of existing rights-of-way and transmission lines and corridors. As such, the Commission cannot determine if approval of it would violate the standards set out in the *Kentucky Utilities* case.

The Commission, having considered the evidence and testimony offered in this proceeding and being otherwise sufficiently advised, finds and concludes that KU's application for a CPCN to construct the proposed transmission line should be denied. The Commission invites KU to reapply for a CPCN to construct the needed transmission facilities after the Company has conducted a more thorough review of all reasonable alternatives, including locating the line partially or fully along existing transmission corridors.

COMPANY RESPONSE TO PUBLIC COMMENTS

Finally, the Commission must address KU's response to the public comments witnesses provided at the July 5, 2005 hearing. In short, the Commission is disappointed in the approach the Company took and gives KU and all other similar applicants notice that we expect a different response in future cases.

As provided in KRS 278.260, the Commission's general complaint jurisdiction is broad. When a customer files an informal complaint with the Consumer Services Division, the utility is required to respond within a certain number of days. If the

complaint cannot be resolved informally, it may progress to a formal complaint. From that point the complaint process may follow any number of different procedural paths, including a full hearing and Commission decision. The amendments to KRS 278.020 also specifically offer persons adversely affected by a proposed transmission line an opportunity to make comments in a public hearing, thereby consolidating them into one proceeding.

In this case, the Commission convened a hearing in Frankfort to gather customer input. When KU was asked at the evidentiary hearing how it intended to address those individual situations, the Company simply responded that it would deal with them once the Commission issued a certificate.¹⁷ This type of approach by the utility effectively precludes the Commission from exercising any jurisdiction it may have in this case related to those complaints. It also leaves customers with few, if any, options. Perhaps a customer who is still dissatisfied at that stage could file a complaint through the Consumer Services Division, although the Commission's alternatives would be severely diminished. At that point, though, customers may well wonder what the point of the local hearing was if they have to refile their complaints after the Commission has ignored their comments and issued a certificate. More likely, they will simply drop the whole issue, convinced they would once again be ignored. This approach has the potential to disregard the legislative directive to conduct meaningful local hearings.

In Case No. 2004-00365, Big Rivers Electric Corporation ("Big Rivers") requested a certificate to build a transmission line in Breckinridge and Meade counties. At the evidentiary hearing, Staff asked Big Rivers to respond to specific customer

¹⁷ Tr., Vol. I, at 97-102.

complaints raised at the local public hearing. Big Rivers responded that it had contacted those customers between the local public hearing and the evidentiary hearing. A review of the transcript and final Order in that case will show that, while Big Rivers was able to satisfy only a few of the complaints, it made a good faith effort to address them, and the Commission expects no less of other applicants.

IT IS THEREFORE ORDERED that KU's application in this case is denied.

Done at Frankfort, Kentucky, this 8th day of September, 2005.

By the Commission

ATTEST:



Executive Director